

ESTTA Tracking number: **ESTTA423547**Filing date: **08/04/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following parties oppose registration of the indicated application.

**Opposers Information**

Name	Dherbs Health Emporium, Inc.		
Entity	Corporation	Citizenship	California
Address	1925 Pontius Ave. Los Angeles, CA 90025 UNITED STATES		

Name	Djehuty Herbaceuticals		
Entity	California general partnership	Citizenship	California
Address	1925 Pontius Ave. Los Angeles, CA 09925 UNITED STATES		

Attorney information	Allan B. Gelbard, Esq. Law Offices of Allan B. Gelbard 15760 Ventura Blvd., Suite 801 Encino, CA 91436 UNITED STATES xxesq@aol.com Phone:(818)386-9200		
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**Applicant Information**

Application No	85253122	Publication date	07/12/2011
Opposition Filing Date	08/04/2011	Opposition Period Ends	08/11/2011
Applicant	Akbar, Jabir Abdul 1851 Cleveland Road Glendale, CA 91202 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. First Use: 2004/00/00 First Use In Commerce: 2004/00/00 All goods and services in the class are opposed, namely: On-line retail store services featuring herbal supplements, teas, extracts, elixirs, rubbing oils, inhalers, and sprays
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**Grounds for Opposition**

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant is attempting to register a mark rightfully belonging to a separate entity.

Related Proceedings	California Superior Court case BC466813; and, California Superior Court case BC056124; and, California Superior Court case 11C02823; and, United States
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	District Court, Central District of California Case CV11-06346.
Attachments	Opposition.pdf ( 4 pages )(52008 bytes )

### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Allan B. Gelbard, Esq./
Name	Allan B. Gelbard, Esq.
Date	08/04/2011

ALLAN B. GELBARD, ESQ.  
THE LAW OFFICES OF ALLAN B. GELBARD  
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CA Bar # 184971

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIALS AND APPEALS BOARD**

In the matter of Trademark Application Serial Number 85253122

For the mark DHERBS.COM

Applicant: JABIR ABDUL AKBAR

Filed on February 28, 2011

Published for Opposition in the Official Gazette on July 12, 2011

DHERBS HEALTH EMPORIUM, INC., a  
California corporation; DJEHUTY  
HERBACEUTICALS, a California general  
partnership,

Opposers

vs.

JABIR ABDUL AKBAR, an individual;  
a/k/a EARNEST COLLINS, JR., an individual;  
a/k/a DJEHUTY ME-AT-RA, an individual.

Applicant

I hereby certify that this document (along with any referred to as being attached or enclosed) and the required fee is being filed through the TTAB's ESTTA system on 08/04/2011 and that a copy has been served on the attorney of record via First Class Mail as specified herein.

/Allan B. Gelbard, Esq./  
Allan B. Gelbard, Esq.

**NOTICE OF OPPOSITION**

Dherbs Health Emporium, Inc., a California corporation and (hereinafter "DHE") and Djehuty Herbaceuticals, a California general partnership ("DH"), through their attorney, Allan B. Gelbard, Esq., hereby OPPOSE registration of the aforementioned mark, in International Class 35, on the principal register.

DHE and DH believe they will be damaged by registration of the mark shown in the above-referenced application for the following reasons:

1. Applicant JABIR ABDUL AKBAR, a/k/a EARNEST LASHUN COOPER, JR., a/k/a DJEHUTY ME-AT-RA (hereinafter “AKBAR”) is, and was at all times relevant hereto, merely a minority shareholder in DHE and a minority partner in DHE’s predecessor in interest DH.

2. Opposer DHE is an on-line seller of various herbal products and literature related thereto. Opposer DH was an on-line seller of various herbal products and literature related thereto, and is DHE’s predecessor in interest. DHE presently owns and operate the internet website located at WWW.DHERBS.COM (hereinafter the “Website”) and the corresponding business.

3. DHE and/or DH are the rightful owner(s) of the mark applied for by Applicant.

4. The specimen of use provided by Applicant AKBAR is a scan of the Website which was owned and operated by DH at the time the scan was made by Applicant. Subsequently, the Website was transferred to, and is now operated by DHE. It did not, and does not constitute use in commerce by AKBAR as required pursuant to 37 CFR 2.33(b)(1).

5. The registrant for the URL www.dherbs.com is and was not AKBAR, but rather DHE’ CEO. The administrative contact and technical contacts for the Website are also DHE’ CEO. DHE’ CEO has licensed exclusive use of the URL to DHE.

6. Opposers are informed and believe and thereupon allege that Applicant is attempting to register “DHERBS.COM” to prevent DHE and/or DH from continuing their lawful business through use of its proprietary Website, and/or to cause confusion in the minds of the public as to the actual source for DHE’s and/or DH’s goods and services.

7. AKBAR's application, and the attached specimens, constitute a fraudulent filing as he is not the entity that operates the business, a controlling shareholder and/or controlling partner therein, nor does he have exclusive rights therein.

8. AKBAR is not the owner of the mark and has actual knowledge that DHE and/or DH is the actual owner of the mark and has exclusive rights therein. AKBAR cannot satisfy the requirements of 37 CFR 2.33(b)(1) and his verified statement contained in the application is untruthful and fraudulent.

9. Any use by AKBAR of the mark would cause confusion in the minds of the public as between his individual business and that of DHE and/or DH.

10. A civil action against Akbar (Cooper) seeking, among other things, declaratory relief pertaining to the trademark ownership has been commenced in the Superior Court of California, County of Los Angeles. The case number is #BC466813.

11. This Opposition is accompanied by the fee required pursuant to TTAB §§ 2.6, 2.101(d)(1)

For the reasons above, Opposers request that application for registration, serial number 85253122 be DENIED.

Dated this 4<sup>th</sup> day of August, 2011

THE LAW OFFICES OF ALLAN B. GELBARD

By: / Allan B. Gelbard, Esq./  
Allan B. Gelbard, Esq.  
Attorney for Opposer  
Dherbs Health Emporium, Inc. and  
Djehuty Herbaceuticals.

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 15760 Ventura Boulevard, Suite 801, Encino, CA 91436. On 8/4/2011, I served the within

**NOTICE OF OPPOSITION**

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by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Encino, California addressed as set forth below.

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by causing personal delivery by ESTTA of the document(s) listed above to the person(s) at the address(es) set forth below.

☐

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Josh Gerben, Esq.  
Gerben Law Firm, PLLC  
1615 L Street NW, Suite 650  
Washington, DC 20036  
trademark@gerbenlaw.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 8/4/2011, at Encino, California.

/Allan B. Gelbard, Esq./  
Allan B. Gelbard, Esq.